

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

MIKE CASTILLO,

Plaintiff

V.

GEICO CASUALTY COMPANY,

Defendant

Case No.: 2:19-cv-1259-APG-VCF

**Order (1) Granting in Part Motion to Dismiss, (2) Denying Motion to Bifurcate, and (3) Granting Leave to Amend**

[ECF Nos. 6, 7]

Plaintiff Mike Castillo sues his insurer, defendant GEICO Casualty Company (GEICO), following a car accident in which he was injured. Castillo believes the at-fault driver's \$15,000 insurance policy was insufficient to cover his injuries, so he submitted a claim with GEICO for underinsured motorist (UIM) coverage. ECF No. 1-1 at 5. Castillo alleges he incurred approximately \$79,000 in medical bills and that he provided GEICO with a medical opinion that he would need an additional \$70,000 in future treatment on his knee. *Id.* at 5-6. Castillo submitted to an independent medical exam, and that doctor "concluded that there was no injury sustained as a result" of the car accident. *Id.* at 6. Based on these allegations, Castillo asserts claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and unfair claims handling practices.

GEICO moves to dismiss, arguing that the facts alleged in the complaint show only a dispute as to the value of Castillo's claim and do not plausibly allege either bad faith or unfair practices. GEICO also moves to dismiss Castillo's bad faith claim as premature until the breach of contract claim is resolved. Alternatively, GEICO moves to bifurcate and stay discovery and trial on the bad faith claim until after the breach of contract dispute is resolved.

1 Castillo responds that the court must first establish subject matter jurisdiction before it  
2 can rule on GEICO's motion. On the merits, Castillo argues that he has adequately alleged  
3 GEICO did not explain the basis for its denial and required him to submit to an independent  
4 medical exam. Finally, Castillo argues his bad faith claim is not premature and should not be  
5 bifurcated because it is intertwined with his breach of contract claim.

6 I grant GEICO's motion to dismiss Castillo's claims for bad faith and unfair practices,  
7 with leave to amend. I deny GEICO's motion to bifurcate and stay.

## 8 **I. ANALYSIS**

### 9 **A. Subject Matter Jurisdiction**

10 Castillo argues I must first determine subject matter jurisdiction before ruling on  
11 GEICO's motion. GEICO replies that it properly removed this action based on diversity  
12 jurisdiction.

13 Federal district courts have original jurisdiction over civil actions in diversity cases  
14 "where the matter in controversy exceeds the sum or value of \$75,000" and where the matter is  
15 between "citizens of different States." 28 U.S.C. § 1332. Castillo does not suggest any defect in  
16 jurisdiction, and I find none. GEICO set forth in its removal petition that the parties are diverse  
17 because GEICO is a Maryland corporation with its principal place of business in Maryland and  
18 Castillo is a resident of Nevada. ECF No. 1 at 3. Castillo does not dispute either of these facts.  
19 GEICO also set forth in its petition that Castillo claims approximately \$64,000 in medical  
20 specials on his UIM claim, plus future treatment and extra-contractual damages. *Id.* at 3-4.  
21 Castillo does not dispute these figures and confirms in his opposition that he is seeking well  
22 beyond the jurisdictional amount. *See* ECF No. 10 at 2-3. I therefore have subject matter  
23 jurisdiction in this action.

1           **B. Motion to Dismiss**

2           In considering a motion to dismiss, “all well-pleaded allegations of material fact are taken  
3 as true and construed in a light most favorable to the non-moving party.” *Wylar Summit P’ship v.*  
4 *Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). However, I do not assume the truth  
5 of legal conclusions merely because they are cast in the form of factual allegations. *See Clegg v.*  
6 *Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994). A plaintiff must make sufficient  
7 factual allegations to establish a plausible entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550  
8 U.S. 544, 556 (2007). Such allegations must amount to “more than labels and conclusions, [or] a  
9 formulaic recitation of the elements of a cause of action.” *Id.* at 555.

10                 *1. Bad Faith*

11           Under Nevada law, an insurer breaches the duty of good faith when it refuses “without  
12 proper cause to compensate its insured for a loss covered by the policy.” *U.S. Fid. & Guar. Co.*  
13 *v. Peterson*, 540 P.2d 1070, 1071 (Nev. 1975). An insurer is without proper cause to deny a  
14 claim when it has an “actual or implied awareness” that no reasonable basis exists to deny the  
15 claim. *Am. Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 729 P.2d 1352, 1354 (Nev. 1986).  
16 An unreasonable delay in payment can also constitute bad faith. *Guar. Nat. Ins. Co. v. Potter*,  
17 912 P.2d 267, 272 (Nev. 1996) (“[T]his court has addressed an insurer’s breach of the implied  
18 covenant of good faith and fair dealing as the unreasonable denial or delay of payment of a valid  
19 claim”). However, an “insurer does not act in bad faith merely because it disagrees with the  
20 claimant’s estimation of his injuries or delays paying out benefits until it receives relevant  
21 documents or expert opinions.” *Igartua v. Mid-Century Ins. Co.*, 262 F. Supp. 3d 1050, 1055 (D.  
22 Nev. 2017) (holding the insurer acted reasonably in handling an insured’s claim, despite delaying  
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1 payment several years, because there was a reasonable dispute about the extent of the insured's  
2 injuries and whether those injuries were caused by the accident).

3 GEICO argues that Castillo's bad faith claim is premature because his breach of contract  
4 claim must be resolved first. But a plaintiff does not need to establish success on a contractual  
5 claim before proceeding with a bad faith claim. *Aiello v. Geico Gen. Ins. Co.*, 379 F. Supp. 3d  
6 1123, 1129 (D. Nev. 2019). To find otherwise would require a plaintiff to commence two  
7 separate lawsuits even if the facts establish that the insurer "breached the insurance contract and  
8 acted in bad faith within the same factual sequence." *Drennan v. Maryland Cas. Co.*, 366 F.  
9 Supp. 2d 1002, 1007 (D. Nev. 2005). I therefore deny GEICO's motion to dismiss on this basis.

10 However, I grant GEICO's motion to dismiss the bad faith claim for failure to state a  
11 claim because Castillo's complaint lacks factual allegations that GEICO denied coverage with an  
12 actual or implied awareness that there was no reasonable basis supporting its decision. Castillo  
13 contends GEICO denied his claim without explanation, but the complaint alleges that the doctor  
14 who conducted the independent medical exam concluded Castillo's injuries were not causally  
15 related to the accident. Absent some other allegations, it is unclear what Castillo is contending  
16 GEICO failed to explain or how GEICO acted with an actual or implied awareness that it lacked  
17 a reasonable basis to rely on the doctor's opinion. I therefore dismiss this claim, with leave to  
18 amend because it is not clear that amendment would be futile. *Sonoma Cty. Ass'n of Retired*  
19 *Emps. v. Sonoma Cty.*, 708 F.3d 1109, 1118 (9th Cir. 2013) ("As a general rule, [d]ismissal  
20 without leave to amend is improper unless it is clear . . . that the complaint could not be saved by  
21 any amendment.") (quotation omitted).

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1 bifurcation, at least at the early stages of the case, would not be appropriate. I therefore deny  
2 GEICO's motion to bifurcate and stay.

3 **II. CONCLUSION**

4 I THEREFORE ORDER that defendant GEICO Casualty Company's motion to dismiss  
5 **(ECF No. 6) is GRANTED in part.** Plaintiff Mike Castillo's claims for bad faith and unfair  
6 practices are dismissed without prejudice.

7 I FURTHER ORDER that plaintiff Mike Castillo may file an amended complaint by  
8 April 10, 2020.

9 I FURTHER ORDER that defendant GEICO Casualty Company's motion to bifurcate  
10 and stay **(ECF No. 7) is DENIED.**

11 DATED this 19th day of March, 2020.

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14 ANDREW P. GORDON  
15 UNITED STATES DISTRICT JUDGE  
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